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0059 Progress Reports on: Children's Laws, Migratory Labor, Criminal Code — Sentencing

Colorado Legislative Council

Report to the Colorado General Assembly:

Progress Reports On

Children's Laws

Migratory Labor

Criminal Code -- Sentencing

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 59

DECEMBER, 1961

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OF THE

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The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

1. CHILDREN'S LAWS

2. MIGRATORY LABOR

3. CRIMINAL CODE -- SENTENCING

LEGISLATIVE COUNCIL

REPORT TO THE

COLORADO GENERAL ASSEMBLY

Research Publication No. 59
December, 1961

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER 2, COLORADO
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December 1, 1961

To Members of the Forty-third Colorado General Assembly:

In accordance with action taken by the Legislative Council at its meeting on November 30, 1961, reports are transmitted herewith as prepared by the Committee on Children's Laws, Committee on Criminal Code, and Committee on Migratory Labor.

The report of the Children's Laws Committee contains recommendations to 1) establish a youth center at Hesperus for borderline delinquent juveniles; 2) construct a psychiatric hospital for children at Fort Logan; 3) change juvenile commitment laws; and 4) extend the trainable children's program for one year. This report was accepted for transmission to the General Assembly, and the Governor has been requested to include the recommendations among the items for legislative consideration during the second regular session.

The next two reports--on sentencing of criminal offenders and on migratory labor--are merely progress reports and are being transmitted at this time for informative purposes only. Final reports on both of these subjects will be submitted in 1963.

The fourth report herein concerns a 1956 decision by the Colorado Supreme Court and the effect which this decision has on a number of statutes involving punishment by imprisonment. The Governor has also been requested to include this matter for legislative consideration during the second regular session beginning in January, 1962.

Respectfully submitted,

James E. Donnelly
Chairman

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PROGRESS REPORT

November 20, 1961

TO: Legislative Council

FROM: Committee on Children's Laws

SUBJECT: Recommendations for Consideration by the Forty-third General Assembly, Second Session (1962)

Introduction

Under the provisions of House Joint Resolution No. 9 (1961), the Legislative Council was directed to appoint a committee to continue the study of children's laws and child welfare in Colorado. The Legislative Council was also authorized to appoint an advisory committee of lay citizens and public officials interested in child welfare.

The Legislative Council appointed the following members of the General Assembly to serve on the Children's Laws Committee: Representative Elizabeth E. Pellet, chairman; Senator Rena Mary Taylor, vice chairman; Senator Charles E. Bennett; Senator Dale Tursi; Representative Joseph Calabrese; Representative Wayne Knox; Representative Kathleen P. Littler; Representative H. Ted Rubin; and Representative Laurence Thomson.

The Legislative Council also appointed a nine-member advisory committee composed of the following people: Dr. E. Ellis Graham, Director, Special Education Services, Department of Education; Miss Marie Smith, Director, Child Welfare Division, State Department of Welfare; Goodrich Walton, Executive Assistant, State Department of Institutions; Mrs. Paul V. Thompson (Boulder), League of Women Voters; Mrs. Alva Adams (Pueblo); Mrs. Lucille L. Beck (Denver), former state representative; Dr. Thomas Glasscock, Director, Arapahoe County Mental Health Clinic; Dr. Charles A. Rymer (Denver), psychiatrist; and Mrs. Howard Rea (Denver), Colorado Mental Health Association.

During the past six months, the committee has held five meetings, including a public hearing in Durango on the feasibility of using the old Fort Lewis A & M campus at Hesperus as a facility for borderline delinquent and mildly disturbed children.

Study Content and Development

The Children's Laws Committee has concentrated its efforts in the past six months on three projects, for which the preliminary studies had been made during the preceding three years.[1]

These three subjects include: 1) residential treatment for emotionally disturbed juveniles; 2) utilization of the Fort Lewis A & M campus at Hesperus as a youth care facility; and 3) juvenile commitment laws and procedures. In addition to these three subjects, the committee had given attention to the following matters: 1) extension and amendment of the pilot program for trainable children (H.B. 36, 1958); 2) special program for 60 pseudo-defectives now institutionalized at the Ridge and Grand Junction training schools; and 3) the licensing of child care agencies, centers, and other facilities. Considerable work still needs to be done on this last subject.

Committee Findings and Recommendations

Residential Treatment for Emotionally Disturbed Children

At the present time, Colorado does not have a residential center for emotionally disturbed children, although there is a great need for such a facility, as shown by previous studies of the Children's Laws Committee and other groups.[2] In January, 1961, Dr. James Galvin, Director, Department of Institutions, appointed a committee to make a study and recommendations regarding the feasibility, location, and phasing of a residential center for emotionally disturbed children. This committee was chaired by Dr. E. Ellis Graham, State Department of Education, and was composed of psychiatrists, representatives from state agencies and interested community groups, an architect, and three legislators who are now serving on the Children's Laws Committee.[3]

After several months of study and discussion, this committee recommended the establishment of a 100-unit children's psychiatric hospital to be located at Fort Logan on 40 acres which have been set aside for this purpose.

These recommendations were presented both to Dr. Galvin and to the Children's Laws Committee and were discussed at several committee meetings. This proposed children's psychiatric hospital would comprise the following units to be constructed as listed:

1. See Juveniles in Trouble: Probation--Parole--Mental Health, Colorado Legislative Council, Research Publication No. 25, December, 1958; and Juvenile Mental Health, Colorado Legislative Council, Research Publication No. 42, December, 1960.
2. Ibid.
3. Representative Elizabeth E. Pellet, Senator Rena Mary Taylor, and Representative H. Ted Rubin.

1) four cottage-type residential treatment units, two for adolescent and two for pre-adolescent children;

2) a central administrative unit, which would provide space for administrative and professional services, as well as central recreational facilities for the youngsters who are patients;

3) a diagnostic unit, the construction of which would make it possible to transfer the Children's Diagnostic Center from Colorado General Hospital and to enlarge its capacity; and

4) a long-term care unit for children who need extensive treatment and who need a more confined setting than that which would be provided by the treatment cottages.

The Director of Institutions endorsed these recommendations and the construction phasing of the children's psychiatric hospital, as outlined above.

Committee Recommendation. The Committee on Children's Laws recommends that appropriations be made in the 1962 session of the General Assembly for the architectural planning and construction of the children's psychiatric hospital to be located at Fort Logan. An appropriation of $80,000 is necessary for architectural planning and $1,520,000 for construction, according to present estimates. It is expected that the architectural plans will be completed and approved in time to make it possible to begin construction in September, 1962.

Hesperus Youth Center

For the past two years, the Children's Laws Committee has been studying the feasibility of establishing a facility and program for borderline delinquent and disturbed children at the old Fort Lewis A & M campus at Hesperus. In making this study, the committee has: 1) held two hearings in Durango; 2) examined the Hesperus campus; 3) consulted with the State Board of Agriculture, which has statutory control of Hesperus; 4) consulted with Judge James Noland (Durango), who made the original recommendation that Hesperus be used for this purpose; 5) worked with the Department of Institutions in developing a program outline for the proposed facility; and 6) requested and received an opinion from the attorney general regarding the admittance of Indians to the proposed facility.

The State Board of Agriculture has indicated its willingness to turn over a number of campus buildings and residences and 160 acres of land for the new facility. The attorney general informed the committee that there would be no problem regarding the admittance of Indians, as long as Indian children had access to the facility under the same procedures which apply to other children. In cooperation with the Department of Institutions, the committee has worked out an economical method of rehabilitating the buildings for use as a youth center. The remodeling would be accomplished by mobile work crews from either the penitentiary or reformatory. The State Board of Agriculture has already provided funds for repairs and improvements of the water system and utility lines.

The need for such a facility was demonstrated to the committee during its state-wide regional hearings in 1958. Judges, local officials, and interested citizens all expressed concern that Colorado had no place to which children with poor home environments or borderline delinquent behavior might be sent. In the committee's opinion, Hesperus is an excellent site for a pilot program for these children.

Hesperus Program. A program outline for the proposed youth center at Hesperus was developed by a committee appointed by the Director of Institutions at the request of the Children's Laws Committee. This program, as outlined below, was discussed and approved by the Children's Laws Committee at its September and October meetings.

Statement of Purpose and General Philosophy

The youth center should provide facilities for those children who come or who are in danger of coming in conflict with society because of emotional problems or an unfavorable home environment. The goal of turning these youngsters into well-adjusted and socially useful citizens is to be accomplished through:

1) a process of identification with emotionally healthy adults;

2) a wholesome group setting in which the individual can learn a decent respect for his own rights and the rights of others;

3) educational facilities which are geared to individual needs;

4) a series of rewarding experiences which tend to enhance the individual's self-esteem and to develop positive attitudes toward himself and others;

5) the experience of inner satisfaction and the external approval gained in work and play; and

6) attention to long-range goals and the way of achieving them.

Eligibility, Admission Procedures, Length of Stay, and Transfer and Discharge Policies

All children should be committed to the care of the Director of Institutions or to the Chief of Youth Services. No youngster should be

committed to the youth center on the direct order of a judge. The department or the Chief of Youth Services will determine where the child should go on the basis of a complete evaluation. Generally, youngsters who are committed to the youth center should be borderline or minor delinquents who may benefit from the proposed program in an open group care setting. No youngster under the age of 10 or past his 18th birthday should be admitted to the youth center, and no youngster should be permitted to remain past his 18th birthday; however, exceptions may be made for the completion of high school education.

Release from the youth center should be recommended by the Juvenile Parole Board in the same way as for youngsters in the custody of other institutions. The Department of Institutions should be vested with the authority to transfer youngsters who, following admission, are found not to be suitable for management in the youth care setting. Such transfer should be made only upon proper recommendation of the youth center director. Pre-release planning should begin upon commitment to the youth center, and such planning should include consultation and assistance to the children's families. In making pre-release plans, the various resources of the Department of Institutions and related agencies should be drawn upon as needed.

Program

The ideal number of children to be housed in the youth center is considered to be about 60. This would make for the most economical use of available man power.

The youth center program should be directed toward providing youngsters with positive experiences in education, work and play, and associations with others. Teaching should be both academic and pre-vocational. Academic teaching can be accomplished within the youth center setting itself, but consideration might be given also to enrolling at least some of the children in local schools for greater contact with the general community. As far as pre-vocational training is concerned, there might be a later tie-in with the community, as well as with the Department of Vocational Rehabilitation at the time of the expected release of these children.

The success or failure of the program will depend on the proper selection of staff. Teachers should be oriented toward special education and must fit in with the over-all program. The entire youth center should be run as a therapeutic community in which each and every member of the staff, from the director down to the cook, knows that he has a definite role to play in the rehabilitation of these youngsters, over and beyond the special work assigned to him.

Counseling and therapy must be integrated into such a total program. A recreational program is clearly desirable, and there should be opportunity for each child to follow his special interests. There should be encouragement of special projects for individual children. The opportunity for privacy should be given to both children and staff.

There should be as much integration with local community life as possible. A citizens' committee might be appointed by the Director of Institutions, in cooperation with the director of the youth center, to facilitate the acceptance of the youth center by the communities near which it is located. The youth center director should give such assistance to the chairman of the committee as he, the chairman, may desire in organizing the committee and in helping its members with their continuing activities. The committee should meet at regularly stated times, preferably at the youth center, to learn about the center's program and problems. Along with its public relations functions, the committee can help the youth center arrange some community activities for the children, and perhaps serve in an advisory consulting capacity with regard to certain aspects of the youth center program.

Staffing

The director of the youth center must have administrative ability, a special interest in children, and he should have immediate past experience in some allied field, such as psychology, social work, teaching, probation work, or counseling. His general philosophy must be treatment-oriented. He should have the ability to look beyond overt behavior and must try

to understand the determinants of such behavior. He must be able to provide leadership and guidance for the entire staff. He should be emotionally mature and understand normal adolescent development.

If the children are properly evaluated by the time of the commitment to the youth center, it should not be necessary to have a full-time psychologist on the staff, at least initially. However, should the services of a psychologist become subsequently necessary, they might be provided on a part-time basis by some arrangement with the staff of the local mental health clinic. It is felt essential that a social case worker be part of the staff from the very beginning, because there should be opportunity for contact with the families of the youngsters. If a social case worker with group work experience can be found, he could serve many other important functions within the group setting.

Committee Recommendation. The Committee on Children's Laws recommends that: 1) enabling legislation to establish the Hesperus Youth Center be introduced in the 1962 session of the General Assembly; and 2) appropriations be made at the same time for remodeling the buildings to be used and for the operation of the Hesperus Youth Center during the 1962-1963 fiscal year. It is estimated that $50,000 would be sufficient for remodeling and $180,000 would be needed to operate the program for one year.[4]

Juvenile Commitment Laws

At present, juvenile delinquents are committed to specific institutions by the county and juvenile courts in Colorado rather than to a central state agency or department, as is the case in many other states. Central commitment procedures have not been considered necessary previously, because Colorado has not had a variety of institutions in which juvenile delinquents might be placed; girls are committed to the Mount View School at Morrison and boys to the Lookout Mountain School at Golden. Judges also may commit dependent children to the State Children's Home and mentally retarded children to the state training schools at either Ridge or Grand Junction.

4. The estimate of $180,000 is based on a maximum of 60 youngsters at a per capita annual cost of $3,000.

On occasion the courts have committed as delinquent children who, as later tests and evaluations showed, might more suitably have been placed in either Ridge or Grand Junction. The children's home study made by the National Child Welfare League in 1959 showed that many children residing in that institution should not have been committed there. In its report to the governor, the National Child Welfare League stated that the indiscriminate commitment of children to the children's home made it very difficult to establish and operate an adequate terminal group care program.

Cognizance of the possible miscommitment of children was taken by the General Assembly in 1957, when authority was given to the governor to transfer children from one institution to another under certain circumstances and with certain safeguards.

While Colorado has not had a variety of facilities, at least as far as juvenile delinquents are concerned, present recommendations of the Children's Laws Committee would provide additional choices in the placement of these youngsters. Most county judges do not have local professional resources available to them to analyze and evaluate juveniles before the court and to assist them in determining whether a youngster should be sent to an industrial school, a camp or group care facility, or a residential treatment center. Many other states have solved this problem by providing that the courts commit certain categories of children to a central state agency or department, rather than to a specific institution. This central agency or authority studies and evaluates the youngsters who have been committed to it and then either places them in the appropriate institution or releases them on parole or in some other way.[5]

The Director of Institutions has informed the Children's Laws Committee that his department now has sufficient professional personnel to diagnose and evaluate youngsters, if they were committed to the department rather than a specific institution.

Committee Recommendations. The Committee on Children's Laws recommends that legislation be introduced in the 1962 session of the General Assembly to make the following changes in juvenile commitments:

1) All delinquent children shall be committed to the Department of Institutions for study and evaluation, to be followed by placement in the appropriate state institution or referral to the Juvenile Parole Board.

2) The custody of dependent children may be placed with the Department of Institutions. In such cases, the department would be required to study and evaluate these children and then to place them in the appropriate state institution or to refer them back to the court of original jurisdiction with a recommendation (not binding) as to which other statutory alternative with respect to the placement of dependent children should be followed.

5. Sometimes juveniles are committed who are found to need foster home placement or out patient treatment, or it is found that they could remain in their own homes under supervision.

3) The transfer procedure should be simplified: a) by placing the responsibility with the Director of Institutions rather than the governor; b) by including all state institutions for children civilly committed, rather than limiting it to a few institutions as at present; c) by including all children under the age of 18 who have been civilly committed either to the department or to a specific institution.

Pilot Program for Trainable Children

In 1958, the General Assembly passed legislation which established a pilot program for trainable children.[6] This legislation provided state aid on a 50-50 matching basis for those school districts which established classes for trainable children under the procedures outlined in the act. These programs had to be approved by the State Department of Education before reimbursement could be made. Because of the experimental nature of the program, only $50,000 annually was appropriated for this purpose, and the program was scheduled to terminate after the 1961-1962 school year. The State Department of Education was also required to submit a report to the General Assembly in 1962, covering the two years of operation under this pilot program.

During the 1958-1959 school year, five school districts participated in the program: Cortez, Durango, Pueblo (two classes), Greeley (two classes), and Colorado Springs. During the current school year Jefferson County has been added to the list of participants, with two classes, and Colorado Springs has added a second class.

Committee Recommendation. While the Department of Education's report has not yet been completed and approved, preliminary reports, in the committee's opinion, indicate sufficient success and interest to warrant continuing the program at its present level for another school year (1962-1963) and to require an additional report from the State Department of Education to the General Assembly in 1963.

At the present time, reimbursement for transportation costs is not allowed. In a number of the participating districts, some trainable children are unable to enter the program because of a lack of transportation. The committee recommends that matching state aid be extended to cover transportation of children in those districts which determine that such a need exists, provided that any transportation program must be approved by the State Department of Education. Reimbursement of transportation costs can be provided without increasing the appropriation above the $50,000 presently authorized, because only $30,000 is being expended annually.

6. House Bill 36 (1958).

Pseudo-Defective Children at Ridge and Grand Junction

There are 60 youngsters at Ridge and Grand Junction who have become serious behavior problems. Dr. Wesley D. White, Chief of Mental Retardation, Department of Institutions, refers to these youngsters as pseudo-defectives, because their mental retardation has been caused by extensive institutionalization, without any training or rehabilitation. The average age for this group is 17 years, and most of them have been institutionalized for 10 years or more.

Originally, Dr. White had planned to place these children in a separate unit at Ridge and to develop a special program for them. Delay in the new construction program at Ridge has caused him to make alternate plans. Dr. White now proposes that a two-year program be established for these youngsters at Fort Logan, making use of two buildings which were formerly used as officers' quarters. It is Dr. White's estimate that at least two-thirds of this group would need no further institutionalization after a two-year crash rehabilitation program.

It is presently costing the state $2,000 a year to keep one of these youngsters in either Ridge or Grand Junction. During a two-year period, the total expenditure would be $240,000. Dr. White has requested a total of $564,000 to finance his proposed two-year program, or $324,000 more than the amount which would be expended anyway. Approximately $46,000 of this amount would be for a supplemental appropriation, so that he could begin immediately to recruit staff for this project. Approximately $12,000 would be needed in capital construction funds to remodel the two buildings and purchase necessary equipment. Slightly in excess of $220,000 a year would be needed to operate the program.

Committee Recommendation. The Committee on Children's Laws recommends that the General Assembly give favorable consideration to the appropriation request for this project.[7] The average age of these youngsters is 17, and average life expectancy is another 50 years. If all of these youngsters had to be institutionalized for the remainder of their lives, it would cost the state $5 million (50 years times 60 youngsters times $2,000 annual per capita cost). Dr. White, in effect, is asking the state to spend $324,000 more in the next two years with the very good possibility of saving at least $3.84 million in the long run (if the estimated two-thirds of this group no longer need institutionalization).

7. Legislation establishing the program is not needed, as it will be operated and administered by the State Home and Training School at Ridge.

PROGRESS REPORT

November 29, 1961

TO: Colorado Legislative Council

FROM: Legislative Council Migrant Labor Committee

SUBJECT: Migrant Labor Study

Introduction

House Joint Resolution No. 10 (1961) directed the Legislative Council to continue the study of migratory farm labor which had been started by a Legislative Council Committee in 1960.[1] In authorizing the continuation of this study, House Joint Resolution No. 10 specified that the following subjects be included:

1) coordination of efforts by public agencies and statewide and local organizations in trying to solve the problems of migrant farm workers and their families;

2) cooperation between federal and state agencies to facilitate the recruitment, transportation, and placement of migrant farm workers;

3) economic problems of migrant farm workers;

4) community cooperation in providing social services for migrants;

5) migrant school programs; and

6) such other problems as may come within the purview of this study.

The Legislative Council appointed the following committee to continue the migrant labor study: Representative M. R. Douglass, chairman; Senator Robert E. Allen, vice chairman; Senator Charles E. Bennett; Senator Raymond Braiden; Senator Allegra Saunders; Representative James Braden; Representative Edwin S. Lamm; Representative Noble Love; Representative William C. Myrick; Representative H. Ted Rubin; Representative Ray Simpson; and Representative Betty Kirk West.

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1. The migrant labor study was authorized initially by Senate Joint Resolution No. 21 (1960).

Reasons for Progress Report

The resolution which authorized the study did not require the Legislative Council to report its findings and recommendations prior to the convening of the Forty-fourth General Assembly in 1963. The Migrant Labor Committee, however, decided to make a progress report at this time for several reasons:

1) The committee feels that a summary of its efforts thus far is pertinent because of the increasing national, state, and local interest in migrant farm workers and their problems.

2) The committee believes that this review of its work, including an outline of problems as they appear at this time, and a brief explanation of the study agenda for the comming year will demonstrate the subject's complexity and the need for a thorough study, as there appear to be no simple solutions.

3) The committee is concerned over the false impressions concerning the migrant study which may have resulted from some of the publicity given to the committee's efforts.

Previous Recommendations for Continuing Study

The Legislative Council Committee which began the migrant labor study in 1960 made the following statement in its report to the Forty-third General Assembly:[2]

> A realistic appraisal of migratory labor problems and a proper evaluation of proposals for improvement cannot be made without first-hand knowledge concerning the migrant and the conditions under which he and his family live and work. For this reason, the committee proposes that a comprehensive field study be made as the next step in its study program. This field study . . . /should/ be coordinated with a series of committee regional meetings in the five areas of the state where the greatest number of migratory workers are employed: Northern Colorado, Arkansas Valley, San Luis Valley, Western Slope, and San Juan Basin.

The 1960 committee recommended in its report that the field study to be conducted by the Council staff should include: 1) examination of housing facilities for migrants; 2) observation of public agency programs for migrants, with special emphasis on employment department field operations; 3) interviews with a

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2. Migratory Labor in Colorado, A Progress Report, Research Publication No. 43, Colorado Legislative Council, December 1960, p. 35.

representative sample of migratory farm workers to cover such things as cultural background, residence, education, work skills, type and place of agricultural work, and economics of migratory existence; and 4) interviews with a representative sample of growers, community leaders, labor contractors, crew leaders, and processors.[3]

Present Committee Study

At its initial meeting on May 10, 1961, the members of the present Migrant Labor Committee agreed that an extensive field study was needed to develop as complete a picture as possible of the migrant farm worker and his problems in Colorado. The committee also decided to hold a series of regional meetings in conjunction with the staff field work and, in connection with these meetings, to tour migrant housing facilities and to observe migrant schools and other agency and community programs for migrants, whenever possible. The committee directed the staff to follow generally the recommendations of the 1960 committee as to the content of the field study, and the committee devoted considerable time to review and revision of a proposed questionnaire for migrant workers. In making the field study the committee authorized the staff to employ a Spanish and a Navajo interpreter and to seek the cooperation of public agency personnel concerned with migrants.

Because of the wide scope of the study, the amount of field work involved, and the overlap among areas in the peak employment of migratory farm workers, the committee determined that it would take the full two years provided in House Joint Resolution No. 10 (1961) to complete the study. During the first year, it was decided that the committee would cover the Arkansas Valley, San Luis Valley, Palisade area, and San Juan Basin. During the second year, attention would be focused on Northern Colorado, where the largest number of migrants are employed for an extended period, and on certain crop activities in other parts of the state which could not be covered during the first year of the study, e.g., broomcorn harvest in Southeastern Colorado.

Committee Meetings and Related Tours

During the past year, the committee has held eight meetings, six of which were regional public hearings. Public hearings were held as follows:

Arkansas Valley -- Rocky Ford and Lamar, June 5 and 6
San Luis Valley - Alamosa and Monte Vista, July 19 and 20
Western Slope -- Palisade, August 18
San Juan Basin -- Cortez, August 21

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3. Ibid.

Invited to meet with the committee at these hearings were: growers, processors, labor contractors, legislators from the area, federal officials (Bureau of Employment Security, Department of Labor and Bureau of Old Age, Survivors, and Disability Insurance, Department of Health, Education, and Welfare), state officials (departments of education, employment, health, and welfare, the Colorado highway patrol, and the Industrial Commission), local officials (education, health, welfare, sheriffs, police chiefs, mayors, county commissioners, and councilmen), community leaders, and interested citizens.

Prior to each series of regional meetings, the Council staff made a preliminary study of the area to compile background data for the committee and to develop a list of those who might be interested in meeting with the committee. Each person on the list received a personal invitation to attend from the chairman on behalf of the committee, and information concerning the meeting and inviting all citizens to attend was sent to all newspapers and radio and television stations in the area. Approximately 280 people attended the public hearings: Rocky Ford, 60; Lamar, 30; Alamosa, 35; Monte Vista, 50; Palisade, 75; and Cortez, 30.

Committee Tours. In connection with the Arkansas Valley meetings, the committee made two tours of migrant housing, one in the Rocky Ford -- Manzanola -- Swink area and the other in the Lamar -- Granada area. The committee also spent one morning at the Rocky Ford school for migrant children. The committee examined housing facilities around Alamosa and Monte Vista, observed workers in the field during lettuce harvest, visited a lettuce packaging plant, and spent some time at the Monte Vista school for migrant children. At Palisade, the housing tour included both the Palisade camp and on-the-farm housing and a visit was made to two peach and pear packing plants. The committee also spent some time at the Palisade migrant school. At the time of the Cortez meeting, there were few migrants in the area, so the committee visited two pinto bean packaging plants and the migrant housing there and traveled to the Navajo reservation to observe how Navajo migratory workers live at home.

Topics Discussed at Regional Meetings. The same major topics were covered at each regional meetings, although there was some difference in the questions asked by the committee because of situations and problems which varied from area to area. In general, the following major topics were covered at each meeting:

1) number of seasonal farm workers employed, during what periods and for what crops;

2) composition of the seasonal farm labor force and the sources of supply for such labor;

3) reasons for decrease in the number of interstate and intrastate migrants and the utilization of local labor for seasonal farm work;

4) employment of Mexican nationals;

5) relationship of processors, growers, growers' organizations, labor contractors, and the state employment service in the recruitment and utilization of seasonal farm labor;

6) agricultural marketing problems, extent of mechanization and technological improvements, need for further mechanization and technological improvement, availability of and need for packing and processing plants;

7) availability and adequacy of housing for seasonal farm workers;

8) migrant health and sanitation programs and needs;

9) migrant school programs and education needs;

10) law enforcement problems related to the migrant farm worker; and

11) community programs for and attitudes toward the migrant farm worker and his family.

Field Study 1961

Interviews were completed with 707 migratory workers from June through October. As 424 of these interviews were with either family heads or family members, information was obtained concerning other members in the family group. Consequently, these 707 interviews covered a total of 1,905 people, of whom 1,160 worked as farm laborers. An analysis of the number of migrants interviewed, location of interviews, and related information is shown in Tables I through III.

Table I
Number and Location
of Migrant Interviews, 1961

	Arkansas Valley	San Luis Valley[a]	San Luis Valley[b]	Palisade Area	San Juan Basin	Total
Total Interviews	100	104	149	313	41	707
Anglo	0	1	0	106	0	107
Spanish American	100	72	96	58	0	326
Negro	0	4	3	125	0	132
Indian	0	0	50	24	41	115
Other[c]	0	27	0	0	0	27
Family Members	77	76	85	152	34	424
Single Workers	23	28	64	161	7	283

a. July-August.
b. September-October.
c. American citizens of Filipino extraction, who are custom lettuce workers.

Table II
Number of People
Covered by Migrant Interviews, 1961

	Arkansas Valley	San Luis Valley[a]	San Luis Valley[b]	Palisade Area	San Juan Basin	Total
Total People Covered	496	320	447	541	101	1,905
Anglo	0	6	0	198	0	204
Spanish American	496	272	343	143	0	1,254
Negro	0	6	3	167	0	176
Indian	0	0	101	33	101	235
Other[c]	0	36	0	0	0	36

a. July-August.
b. September-October.
c. American citizens of Filipino extraction.

Table III
Number of Farm Workers
Covered by Migrant Interviews, 1961

	Arkansas Valley	San Luis Valley[a]	San Luis Valley[b]	Palisade Area	San Juan Basin	Total
Total Workers	240	151	277	422	70	1,160
Anglo	0	3	0	144	0	147
Spanish American	240	115	203	94	0	652
Negro	0	4	3	157	0	164
Indian	0	0	71	27	70	168
Other[c]	0	29	0	0	0	29
Males Over 16	138	113	160	341	37	789
Anglo	0	3	0	107	0	110
Spanish American	138	79	108	64	0	389
Negro	0	4	3	145	0	152
Indian	0	0	49	25	37	111
Other[c]	0	27	0	0	0	27
Females Over 16	71	19	73	56	30	249
Anglo	0	0	0	28	0	28
Spanish American	71	19	52	21	0	163
Negro	0	0	0	5	0	5
Indian	0	0	21	2	30	53
Other[c]	0	0	0	0	0	0
Children Under 16	31	19	44	25	3	122
Anglo	0	0	0	9	0	9
Spanish American	31	17	43	9	0	100
Negro	0	0	0	7	0	7
Indian	0	0	1	0	3	4
Other[c]	0	2	0	0	0	2

a. July-August.
b. September-October.
c. American citizens of Filipino extraction.

The migrants who were interviewed during the past summer and fall were asked questions concerning the following: 1) age and place of residence; 2) number of years as a farm laborer and number of years as a farm laborer in Colorado; 3) crop activity in which employed and other crops in the area in which worker expects to be employed; 4) area or state where employed prior to present employment and expected location of next employment if different from present; 5) attitudes toward working in Colorado and toward employers and communities; 6) how present employment was obtained; 7) present rate of pay and amount made by worker and family during past week and since April 1 of this year; 8) number of days employed during past month and reasons for days of non-work; 9) place in which last winter was spent, employment during the winter and amount earned; 10) comparison of home base or winter housing and present migrant housing; 11) family status, number and age of children, if employed or in school; 12) health status of worker and his family; and 13) financial status of worker and his family, expenditure for food, transportation, and other goods and services.

Other Aspects of Field Work. In addition to the completed migrant questionnaires, the field work thus far has included interviews with a representative number of growers, processors, labor contractors, growers' association officers, state and local officials, community leaders, and law enforcement officers. The subjects discussed during these interviews generally followed the topics covered at the committee's regional hearings, with the questions asked designed to develop more specific and detailed information.

Some 50 growers were interviewed during the field survey, with most of them located in the Arkansas Valley (21) and San Luis Valley (15). There were fewer interviews with growers in the Palisade area and the San Juan Basin, because the shortness of the harvest season caused the growers' time to be at a premium; however, additional interviews will be made during the off season. These growers were asked about their labor and marketing problems, labor utilization and mechanization, crop acreage, and recommendations concerning seasonal farm labor. Considerable time was spent with the growers examining fields and observing crews at work.

As time permitted, extensive interviews were made with processors and officials of growers' associations. Included in these interviews were: Western Canning Company, American Crystal Sugar Company, National Sugar Company, Holly Sugar Company, Devon Packing Company, Empire Field Crops (where the staff had the opportunity to attend a board meeting), San Luis Valley Growers Association, and the Peach Board of Control.

There were several reasons why the number of growers and processors interviewed was much smaller than the number of migrants:

1) The committee's public hearings were held for the purpose of meeting with growers, processors, public officials, and community leaders, so a much larger number of growers and processors were contacted by the committee than those interviewed by the staff.

2) The growers interviewed by the staff were selected because of crop activity, location, and amount of labor employed; generally they were among the largest employers of seasonal farm labor in a given area.

3) The interviews with growers and processors took considerably longer than those with migrants. The average time per interview with growers and processors was two hours and some took much longer.

Considerable time was spent in observing and examining local programs and services for migrants, such as the migrant nurse program, the work of the migrant ministry, school programs, and the employment department farm labor field service. Housing and sanitation facilities were examined, as were some of the vehicles used to transport migrant workers, and visits were made to agricultural experiment stations.

The field staff interviewed migrants either in the evening or on days when they were not working, so as not to interfere with agricultural activities. The other interviews were scheduled at the convenience of the interviewees. The committee wishes to thank all of the growers, processors, public officials, and others who have taken the time to assist the field staff. Without their assistance and cooperation, it would have been impossible for the field study to be completed.

The Migrant Study Thus Far: Some Observations

Because the vast amount of data collected during the past six months is still in the process of being compiled and analyzed, the committee is not in a position to report its findings thus far or to make any specific recommendations; however, some general observations may be made, which may be of help in understanding the migrant labor situation in Colorado and related problems.

Area Differences

The areas covered by the committee during the first year of the study differ to a considerable degree in many respects such as: 1) size and composition of the seasonal farm labor force; 2) crop activity and peak periods of labor utilization;

3) organization of the farm labor force and wage scales; 4) use of Mexican nationals; 5) public and private programs and services for migrants; and 6) community attitudes toward migrant workers. There are considerable variations within some areas as well.

The following examples were chosen to illustrate these differences:

Arkansas Valley. The major crops for which migrant labor is used are onions and sugar beets, with the exception of Baca County where broomcorn is the chief crop activity in which migrants are employed. Other crops for which seasonal farm labor is needed are melons, tomatoes, and cucumbers. All of the migrant workers (except for broomcorn) are Spanish Americans, mostly from Texas with a few from New Mexico. A large number of Cherokee Indians from Oklahoma are employed during broomcorn harvest. The early season peak for seasonal farm labor utilization is usually during the first part of June. The late season peak is usually in early September. This area is one of the two covered by the committee, which uses a large number of Mexican nationals. The wage scale for seasonal farm laborers is one of the lowest in the state ($.65 to $.75 per hour). This is also the area in which labor contractors play the largest role in recruiting interstate migrant workers.

There is little community concern over the migrant, and aside from the children's recreation program sponsored by the migrant ministry and a second hand store operated by the Rocky Ford Ministerial Alliance, there is no organized citizens' activity on behalf of the migrant. On the other hand, the migrant school program in Rocky Ford, in the committee's opinion, is excellent and has been operating for a number of years. The director of the Otero County Health Department has taken an active interest in housing and sanitation conditions and is doing the best job in this respect of any local health department official contacted by the committee. The migrant nurse program operated under health department auspices is also one of the best of its kind.

San Luis Valley. Potatoes, lettuce, and spinach (in that order) are the major crops for which seasonal farm labor is used in the San Luis Valley. Other crops involving the use of seasonal farm labor include peas, cauliflower, cabbage, and carrots. Potatoes are by far the most important crop, although lettuce and spinach are the major crops in Costilla County. There are two peak utilization periods of farm labor, corresponding to the harvest seasons for the major crops. The early season peak is reached by the middle of July and continues at this level through most of August (lettuce and spinach harvests). The late season peak is reached at the end of September and holds for three weeks during potato harvest. The potato harvest is concentrated primarily in the northern part of the valley, where two-thirds of the valley's potato acreage is located, while 85 per cent of the commerical vegetable acreage in the valley is located in the southern three counties (Alamosa, Conejos, and Costilla).

The domestic migrant workers in commercial vegetables, with the exception of lettuce, are primarily Spanish Americans, with most of these workers coming from New Mexico. Approximately 400 custom lettuce packers of Filipino origin are also employed during lettuce harvest. Very few of the Spanish Americans who work in vegetables remain for potato harvest. The potato harvest workers include both a large number of Navajo Indians and Spanish Americans. The Spanish Americans generally come from New Mexico, although a significant proportion migrate from the southern to the northern part of the valley for this purpose.

In addition to the difference in crop emphasis between the northern and southern parts of the valley, there is a wage differential in some instances; some workers in the northern counties receive from $.05 to $.20 an hour more. There is also a piece rate differential between the two parts of the valley during potato harvest; again the rate is higher in Rio Grande and Saguache counties. Wage rates in the valley, especially in the southern counties, are among the lowest in the state. In these counties the hourly wage rates varied from $.60 to $.80 and in the northern counties from $.75 to $1.00 per hour.

A large number of Mexican nationals are employed in the valley, and this number has been increasing annually during the past few years. There is little community interest in migratory workers and no organized citizen activities. The health departments show little concern over housing and sanitation conditions, and while there was a migrant nurse program in operation at one time, it was terminated two years ago. There are three migrant schools in the valley, but these are attended for the most part by children who are now residents.

Grand Junction -- Palisade Area. The crops for which seasonal farm labor is needed in the Grand Junction area include: peaches, cherries, pears, apples, tomatoes, and sugar beets. The largest number of seasonal workers by far are needed during peach harvest, which usually begins the third or fourth week in August and is largely concluded within 10 to 12 days. Most of the fruit in Mesa County is grown in the area surrounding Palisade. Sugar beets and tomatoes are concentrated in the Fruita area, west of Grand Junction. There is not much employment of seasonal farm labor prior to the third week in May. An early season peak is reached toward the end of June. Then there is a gradual reduction in the number of workers needed until peach harvest, which usually begins during the third or fourth week in August and continues for 10 to 12 days. Pear and tomato harvests usually continue until the latter part of September.

While a number of Mexican nationals are employed in sugar beets and tomatoes, there are none used for peach harvest. The peach harvest work force is composed of Anglos, Negroes, Spanish Americans, and some Indians. The wage scale is among the highest in the state, averaging about $1.00 per hour.

This area has the greatest amount of community interest in the migrant and his problems of any region visited by the committee. The Mesa County Migrant Council has been in operation for a number of years and is composed of interested citizens, many of whom are growers, and public officials. An inexpensive clothing and houseware store is run for migrants; there is a day-care program and a medical care program. Although there is considerable community interest, there is still some indifference and hostility toward the migrant. The Palisade area, however, is confronted with a situation which has no parallel in any of the other areas covered by the committee, with the possible exception of the northern San Luis Valley during potato harvest. There is considerable congestion and disruption of normal community activity caused by the influx of a large number of workers and their families during a short period of time for the harvest of a very perishable crop.

The migrant school program has been in operation for a number of years, but attracts fewer children than the Rocky Ford program. The migrant ministry has a team of three working in the area and quartered at the Palisade camp. This team works with the migrant council and this year operated the day-care center and two vocational training programs for teen-age and adult migrants.

San Juan Basin. Pinto bean harvest and pre-harvest are the chief agricultural activities for which seasonal farm labor is employed. Other crops which require a relatively small amount of seasonal farm labor are hay and apples. Almost all of the migrant laborers employed are Navajo Indians, although there are a few intrastate workers. There are no Mexican nationals employed in the area. Hourly wage rates vary from $.75 to $1.00, with most workers receiving $.75 or $.80 per hour. The seasonal farm labor peak is reached in the latter half of September during pinto bean harvest.

There is little community interest in the Navajo and his problems, and there are no special programs, either community or public agency sponsored, for these workers and their families in Montezuma County. In Dolores County, which is part of the San Juan Basin Health Department, a survey has been made as to the health and sanitation needs of the Navajo.[4] The Navajo workers come from the reservation located near Shiprock, New Mexico. According to the answers received to the migrant questionnaire, none of the Navajos who work during pinto bean harvest planned to travel to the San Luis Valley for potato harvest. Conversely, none of the Navajos interviewed in the San Luis Valley during potato harvest had previously worked in pre-harvest activities in the San Juan Basin.

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4. Montezuma County has its own health department.

These differences among areas using large amounts of seasonal farm labor illustrate the complexity of the migrant labor study. Proposals designed to solve a problem in one area may fall short of solution in another area, or may even work a hardship in another area. Undoubtedly, the field study in Northern Colorado will show a much different situation from any encountered by the committee thus far. Consequently, the committee is of the opinion that recommendations should not be considered until after the study has been completed and all proposals are examined in light of their effect in each of the five major areas using seasonal farm labor.

Farm Labor Market Organization

While not slighting the other problems related to migrant labor, the committee is giving special attention to the organization of the farm labor market. In the committee's opinion, the effective recruitment, allocation, and utilization of farm labor is the central problem, and all other problems are related to it. Both the grower and the worker have a major interest in how the farm labor market is organized; the grower needs an assured labor supply at certain specific times; the worker needs continuous employment in order to at least have some possibility of maintaining himself and his family during the growing season and to attempt to lay aside some savings for the winter months. The need for an assured labor supply is one reason why many growers favor the employment of Mexican nationals. More effective allocation and utilization of labor would result in a reduction of the number of workers needed.

Mechanization and technological improvement have altered the farm labor picture considerably in Colorado in recent years by reducing the need for seasonal farm labor, but not to the extent that this has occurred in some other states. There has also been progress in the recruitment and routing of labor, which has reduced the possibility of labor shortages in one area at the same time that there is a surplus of labor in another.

The committee is not yet sufficiently informed to determine: 1) whether further improvements in the recruitment, allocation, and utilization of labor are feasible; and 2) if so, what changes should be made. On the other hand, the committee is not satisfied either that the farm labor market is operating as efficiently as it might. In developing information on this subject, the committee is taking a close look at the functions of the State Department of Employment, growers' organizations, labor contractors, and processors with respect to the recruitment and allocation of labor. In addition, the committee is gathering information on farm labor placement service operations in other states.

Specifically, the committee is trying to find answers to the following questions:

1) How are farm labor needs and available labor supplies determined?

2) Is full utilization being made of the available local labor supply, and if not, what steps can be taken to assure more effective utilization of local labor?

3) To what extent and in what ways can intrastate seasonal farm workers be more efficiently utilized?

4) Can there be more effective recruitment of interstate seasonal farm workers?

5) To what extent are local workers being displaced by interstate and Mexican national workers?

6) Is it possible to schedule interstate migrants, once they are in Colorado, for work in other areas of the state, thereby reducing recruitment needs in those areas?

7) Can the labor supply in a given area at a given time be allocated more effectively, especially considering the roles presently played by the employment department, labor contractors, growers' organizations, and processors?

Housing and Sanitation

During the past year, the committee and the staff have examined all types of housing for migrant workers (both in camps and on the farm). Some of this housing was good, but much of it could not be considered adequate, even by minimum standards. The committee was especially concerned with the lack in many places of even minimum proper sanitary conditions. Lack of proper sewage and garbage disposal and inadequately protected water supplies can have a detrimental effect on nearby communities as well as on the people living in the migrant housing. Perhaps the first step in trying to improve the housing situation would be to assure that at least minimum sanitation standards be met for the protection of the people living both in the migrant housing and the surrounding area.

The committee has been concerned with the seeming lack of interest on the part of local health department officials in this problem, with the notable exception of Otero County. There is considerable question as to whether either the state or local health departments have the legal authority at this time to enforce minimum standards. This question must be answered before any decision can be made regarding statutory amendment.

Concern has been expressed to the committee because there are no standards for housing for interstate and intrastate migratory workers, while there are standards promulgated by the United States Secretary of Labor for Mexican national housing. It has been suggested that at least these standards should be met for domestic workers.

Improvement in housing and sanitation conditions will not result from the promulgation and enforcement of standards alone. In addition, an extensive education program is needed to instruct migrants in the proper use of facilities and the consequences of bad sanitation practices.

In examining migrant housing, the committee has taken cognizance of the fact that migratory workers live in this housing for a relatively short period of time. Failure to recognize this fact could lead to recommendations for housing standards which would would be more restrictive than necessary, creating a considerable burden for growers. Further, housing conditions for migrants must be considered in light of resident housing in the same area. In some places, a portion of the resident housing is equally as bad as that provided for migrants. Many migrants also have poor housing in their state of residence, but the staff interviews indicate that if many of these workers had sufficient income to afford better housing at their home base, they would not join the migrant stream year after year. It is also interesting to note that the field study shows that adequate housing is an asset in attracting and keeping workers and is often a consideration in the worker's decision as to whether to return to the same farm or area in following years.

Other Programs and Problems

The committee has studied many other programs and problems related to migrant workers and their families including: education, welfare, health, day care for small children, and transportation.

The field study and the committee's observations of several migrant schools indicate that the special migrant education program is quite successful, especially considering present limitations. The State Department of Education is to be commended for the leadership it has provided for this program and its continued research on the subject. Additional migrant schools may be needed, but in some areas there is a notable lack of interest in establishing such a program, even though it is financed entirely by the state. Further study is needed to determine the best way in which migrant children present during the regular school term might be integrated into the regular school program. Attention should be given to the feasibility of establishing an adult education or vocational program to assist young adult and older migrants in gaining skills which might make it possible for them to gain employment outside of the migrant stream. It is possible, however, that adult education programs might best be conducted in home base areas. The committee is of the opinion that education offers the greatest opportunity to improve the lot of the migrant and his family.

On the other subjects, the committee has nothing to report at this time, except to note that some counties with limited welfare budgets find it difficult to provide occasional emergency assistance for migratory workers and their families.

The Occupational Health Section of the State Department of Health has offered its assistance to the committee in the study of occupational health problems, a subject the committee has not yet covered in any detail.

The committee also wishes to express its appreciation to the State Department of Welfare and the county welfare departments for providing a month-by-month tabulation of emergency welfare aid for migrants and for interviewing those migrants who request such assistance.

PROGRESS REPORT

November 21, 1961

TO: Colorado Legislative Council

FROM: Legislative Council Criminal Code Committee

SUBJECT: Sentencing of Criminal Offenders

Introduction

The sentencing of criminal offenders was included among those subjects enumerated in Senate Joint Resolution No. 14 (1961), which authorized the criminal code study. The Criminal Code Committee has considered this subject to be of extreme importance and has given it considerable attention and study during the past six months. Even though the committee has considered many aspects of sentencing and the procedures followed in other jurisdictions, the subject is so complex that much more study is needed before the committee will be ready to make any specific recommendations. While the committee is not in a position to make any specific recommendations at this time, it considers the subject sufficiently important to provide the General Assembly at this time with a summary of committee findings thus far and the problems which have to be considered.

As an illustration of the complexity of the sentencing study, the committee is considering the following questions in its efforts to develop a sentencing program for Colorado.

1) What should be the basic approach to sentencing? Assuming that protection of society is the major objective, how may this best be achieved? Should the underlying philosophy (in addition to society's protection) be rehabilitation, punishment, or retribution? How can these different approaches to sentencing be reconciled? Does sentencing serve as a deterrent? If so, to what extent, and should this be a prime consideration?

2) What should be the extent of judicial authority in setting sentences? Should courts be limited to a finding of guilt? Should sentences be set by statute? If so, should this apply to both maxima and minima, or just one end of the sentence (which one)? Should it be possible to release an offender before completion of his minimum, on what basis and under what circumstances? If continuation of judicial sentencing authority (at least to a limited extent) is desirable, what would be a satisfactory combination of judicial and board sentencing authority, not only with respect to the role of each, but also in relationship to the basic approach to sentencing (1) above)? Are the offender's rights safeguarded under the methods of sentencing being considered?

3) If greater responsibility is given to the parole board, what should be the composition of the board (number, qualifications, method of appointment, civil service) and should it serve on a full-time basis?

4) What should be the relationship between the board and the institutions (as to scope of authority, division of responsibilities, supervision)? Specifically, should the board play any role or have any responsibility in initial classification, assignment, placement, and transfer of offenders? If so, to what extent?

5) To what extent should present institutional programs be augmented or changed if the method of sentencing is changed? What do the institutions now have in the way of professional personnel and rehabilitation programs? What is needed and how far reaching should changes be? What should be done if no changes are contemplated in institutional programs?

6) Are the present statutory penalties for crimes satisfactory? If not, which ones should be changed? How should statutory good time provisions be handled? What provision should be made for offenders already committed?

To find answers to these questions, the committee is examining sentencing procedures and philosophy in other states and the federal courts. Members of the advisory committee (composed of judges, correctional officials, psychiatrists, probation and parole officials, prosecuting and defense attorneys, and law enforcement officers) are providing the committee with their counsel, advice, and recommendations based on their many years of experience and their knowledge of criminal law and criminal offenders. A thorough examination is being made of all Colorado criminal statutes to provide the necessary background for decisions regarding statutory revision.

Why Sentencing Is A Problem

In Colorado, the statutes presently provide for a form of indeterminate sentencing for convicted felons (i.e., rather than a fixed sentence, an offender is given a maximum and a minimum sentence by the judge which must be within the maximum and minimum limits set by statute).[1] An offender must serve his minimum sentence, less statutory good time, before he is eligible for parole. He receives statutory good time for good behavior and work performance while he is in the penitentiary.

1. Some statutes provide only for a sentence of not more than a certain number of years. The supreme court has ruled, however, that the judge shall also set a minimum. If an offender is sentenced to the reformatory, he receives an indefinite sentence; no minimum or maximum is set, but the offender cannot be incarcerated for a period longer than the maximum set by statute for confinement in the penitentiary. The offender may be released at any time within the maximum at the discretion of the parole board. Usually, six months must be served before the parole board even considers the case.

Sentencing Difficulties

Several impediments on the successful functioning of the sentencing process in Colorado have been identified by a number of judges, correctional officials, and members of the bar. Some of these impediments result from sentencing practices within the statutory limits and others appear to be inherent in the system itself. Because of these problems and in light of the methods of sentencing followed in other jurisdictions, there has been considerable support for a reexamination of Colorado's sentencing provisions and practices.

Sentencing Disparity. A problem of great concern to correctional officials is sentencing disparity. With respect to sentencing disparity, Warden Harry Tinsley of the state penitentiary has made the following comments:[2]

> It is obvious that in the population of over sixteen hundred in the Colorado State Penitentiary, going there pursuant to sentences imposed in seventeen [sic] separate judicial districts, there is a great disparity in the sentences of prisoners who have been sentenced for similar crimes committed under rather similar circumstances. The prisoners at the penitentiary work closely together, are celled closely together, take their recreation in the same places, do the same things every day and, in general, receive the same general type of treatment. Those persons who have received severe sentences are thrown in daily contact with those who have received more lenient sentences for what may be the same crime committed under similar circumstances by those with much the same individual backgrounds. The person who has received the light sentence generally feels fortunate, but also he may think that his sentence was not so long but what he can afford to have another try at his criminal activities. On the other hand, the individual who has received the longer sentence is understandably embittered toward society in general and toward authority in particular. This natural feeling may be heightened when he finds his short-term fellow prisoners back again in prison for crimes committed after their release, while he himself is still serving his original long sentence. This makes it extremely difficult to effect any positive change for the better in this prisoner's makeup during the time he is in the institution; for whether or not there has been an actual injustice, he himself is convinced that he has received unfair treatment. Often this conviction

2. Rocky Mountain Law Review, "Indeterminate Sentencing of Criminals," by Harry C. Tinsley, Volume 33, Number 4, June, 1961, pp. 536-543.

> makes it impossible to produce any positive or corrective change in him during his stay at the penitentiary. Because his minimum sentence is near his maximum sentence, he leaves the institution with a comparatively short period of parole which he, probably, can and will do in a satisfactory manner. But he often feels that he must get his revenge against society for being unfair to him. This, no doubt, is unsound thinking, but it is to be remembered that those who populate our correctional institutions are not here because they have done sound and constructive thinking in their past lives.

Relationship Between Maximum and Minimum. It has been the opinion of most correctional authorities that an indeterminate sentence is much more satisfactory than one of a set number of years. The flexibility provided by a maximum and minimum offers a greater probability that an offender may be released at the time when he is best able to make a successful return to society. Society is further protected by a system of indeterminate sentencing, because the offender is placed under parole supervision until the expiration of his maximum sentence. With a sentence of a fixed duration it is assumed that his debt to society is paid upon its completion, and he is free to do as he wishes.

The potential advantages of indeterminate sentencing (mentioned briefly above) may be negated in two ways: 1) by the imposition of sentences with the minimum and maximum set so close together that the effect is the same as if a determinate sentence is imposed, e.g., nine years and 11 months to 10 years or four years and six months to five years; 2) by the use of statutory good time allowances to decrease the minimum sentence which must be served.

An examination of the penitentiary's annual statistical report shows that almost 10 per cent of the offenders confined in that institution as of June 30, 1961, received sentences in which the maximum and minimum were set so close together that these sentences were not actually indeterminate.[3] Slightly more than one-third of the inmates as of June 30, 1961, received sentences in which the minimum was more than one-half of the maximum.

Good Time Allowances. Statutory good time allowances reward an inmate for good behavior while he is in the institution. The subtraction of good time allowances from the minimum sentence advances

3. Statistical Report and Movement of Inmate Population, Annual Report, July 1, 1960 through June 30, 1961, Colorado State Penitentiary.

considerably the date at which an offender is eligible for parole.[4] Unfortunately there is not necessarily any correlation between good behavior during confinement and an offender's readiness to return to society. While the parole board has the sole authority to determine release, each inmate knows that he is eligible for parole upon completion of his minimum sentence, less his good time credit. It has been the general practice over the years to release most inmates on this basis, and it is expected. The parole board will turn men down with good reason, but should there be a wholesale refusal of parole, the penitentiary might be faced with a difficult situation.

Reason for Concern. Approximately 95 per cent of all committed offenders return to society sooner or later, even if some return only for relatively short periods of time. It is the opinion of correctional authorities and some judges and attorneys that the inadequacies of Colorado's present sentencing procedures result in some offenders being incarcerated longer than necessary to assure society's protection and in some being released who should remain for a much longer period or perhaps not be released at all.

It is the observation of the wardens of both the penitentiary and the reformatory and the director of the adult parole division that unless an offender is released at the time he appears to have the best opportunity for a successful return to society, the chances of rehabilitation are considerably lessened and perhaps eliminated entirely.

Many of those who have expressed concern over the sentencing of offenders feel that only minor changes are needed. Others have expressed the opinion that a complete revision is needed. It is the committee's judgment based on its study and discussion thus far that no method of sentencing is perfect, although the approaches taken in some jurisdictions may be more satisfactory than the present procedures in Colorado. Some of these approaches are discussed in a later section of this report.

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4. 105-4-4. Reduced time for good conduct.--Every convict who is, or may be imprisoned in the penitentiary, and who shall have performed faithfully, and all who shall hereafter perform faithfully, the duties assigned to him during his imprisonment therein, shall be entitled to a deduction from the time of his sentence for the respective years thereof, and proportionately for any part of a year, when there shall be a fractional part of a year in the sentence: For the first year, one month; for the second year, two months; for the third year, three months; for the fourth year, four months; for the fifth year, five months; for the sixth and each succeeding year, six months.

   Inmates may receive an additional 10 days per month as trusty time (105-4-5).

Sentencing and Institutional Programs

Sentencing, incarceration, and parole are all integral parts of a continuous correctional process. The separate components of the correctional process should be coordinated to achieve maximum results with respect to the protection of society and the rehabilitation of offenders, and, in so far as possible, the same philosophy should underly the total program.

Sentencing is the key to a successful corrections program. Even if the institutions and parole department are staffed with qualified, dedicated personnel and programs are aimed at rehabilitation, the possibilities of success are minimized if the method of sentencing used does not make it possible for the parole authority to release an offender at the time that he is considered to be a good societal risk. If he must remain in the institution for a longer period, the effects of the program are diminished or perhaps even negated. If he must be released from the institution before he is considered ready, then the program has little chance of being helpful and both society and the offender are losers.

Conversely, it is dubious that much can be accomplished by a change in the method of sentencing if accompanying changes, as needed, are not made or at least initiated in institutional programs. In addition to a qualified parole board, correctional institutions and facilities must have properly qualified and experienced professional personnel on their staffs, not only to develop and emphasize rehabilitation programs, but also to make evaluations and prepare the pertinent data needed by the board in making its decisions.

As examples, some of the more important components of the correctional program in this respect are: 1) initial evaluation, classification, and placement; 2) vocational training and education programs; 3) counseling and testing; 4) psychiatric services; and 5) pre parole planning and guidance.

During the past few years in Colorado, major advances have been made in these areas at both adult correctional institutions, and further improvements are planned.

Purpose of Incarceration

During the colonial period and for at least the first hundred years of the nation's history, punishment was considered the major reason for imprisonment. This approach was more sophisticated than the "eye for an eye" concept. It was assumed that punishment was a crime deterrent to the incarcerated criminal with respect to future offenses and to others who would be less likely to commit offenses because of the fear of retribution. The concept of rehabilitation as it is known at present did not play an important role in penal confinement, except that if imprisonment as punishment actually acted as a deterrent to further crime, then, in that sense, rehabilitation can be said to have been accomplished.

Although the concept of punishment is still an important factor to a varying degree, modern penology is based on the premise that institutional confinement has two purposes: 1) the protection of society; and 2) rehabilitation of the offender. The second cannot be stressed to the detriment of the first, so that both probation and parole should be judiciously granted and competently supervised. The aspect of punishment through confinement for at least a specified number of years has been tempered by the desire to release an offender at the time at which he is considered to have a chance to make a successful return to society under parole supervision for as long a period as necessary.

The adoption of minimum and maximum sentences is an implementation of the approach to penology which incorporates protection of society and rehabilitation of the offender. It provides a latitude within which an offender may be released, while at the same time the length of the minimum and maximum reflect the punishment aspect, in as much as these minima and maxima are usually set according to the severity of the various categories of crime in relationship to one another.

While views on the purposes of incarceration have changed generally, the concepts of punishment, retribution, and deterrence are still cited as important reasons for penal confinement. To a certain extent, these three purposes of confinement are not necessarily incompatible with rehabilitation, but, according to many correctional authorities, their emphasis diminishes the possibility of developing meaningful rehabilitation programs. They argue that such programs, even with their present limitations, offer the best possible for the protection and safety of society and for the offender to become a useful citizen.

Generally, law enforcement officials have placed considerable emphasis on the concepts of punishment and deterrence, and they have been joined in this point of view by many citizens who have been the unwilling victims of criminal acts and who also would like to see retribution made. This point of view is understandable, but carried to an extreme would result in lengthy sentences for most offenders, regardless of other considerations. Institutional personnel and programs also exhibit in varying degrees the concepts of punishment, deterrence, and retribution, even though there is more and more emphasis on rehabilitation. For this reason, there appears to be no state or other jurisdiction where correctional programs embody all aspects of the rehabilitative approach to penology to the exclusion of other concepts; given the general public reaction to the criminal offender it is little wonder that this is so. It can and has been argued that until much more is known about man and his reaction to his environment, society is best served through continued reliance on older and established concepts of incarceration, although these concepts more and more are being questioned.

Different Approaches to Sentencing

In the broadest sense indeterminate sentencing may be defined as any method of sentencing which includes a variable rather than a fixed period of incarceration. This definition applies, regardless of whether sentencing is a judicial prerogative, set by statute, or the responsibility of a parole board or similar authority.

While the broad definition of indeterminate sentencing encompasses at least some part of the penal codes of more than two-thirds of the states, a more restricted definition would apply to relatively few. Advocates of sentencing reform usually refer to indeterminate sentencing as a system of sentencing in which judicial authority and responsibility extends only to the finding of guilt; the determination of actual sentence is the responsibility of the parole board or some similarly constituted commission. When sentence is passed by the courts under this system only the statutory limits may be imposed.[5] Discretion within these limits passes from the judiciary to the paroling authority.

Some indeterminate sentencing advocates (within the narrow definition used above) believe in a flexible sentencing structure which allows an immediate parole in cases where such release is justified and likewise permits detention for a lifetime where that is justified -- both without regard for the partciular crime for which the conviction was had. This approach assumes that knowledge of human behavior has advanced to the stage that legal safeguards are unnecessary because the vesting of this power in a parole board or similar commission would not result in its arbitrary and/or capricious exercise. This method of sentencing in actuality provides an indefinite sentence rather than an indeterminate one and is similar to Colorado's sex offender law and to S.B. 188, introduced during the Forty-second General Assembly, First Session 1959, and H.B. 42, introduced during the Forty-third General Assembly, First Session, 1961.[6]

It is not surprising that none of the states have gone this far with indeterminate sentencing. Those states which are considered the most advanced in this respect provide that no one may be incarcerated for a period longer than the maximum prescribed by law, although in some of these states it is possible to be released prior to the statutory minimum.

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5. Variations of this approach include: a) imposition of statutory maximum only, minimum established by parole authority; or b) maximum set by judge within statutory limit, minimum established by parole authority. If the latter plan is followed, it is usually recommended that parole supervision be extended to the end of the statutory maximum term at the discretion of the paroling authority rather than be terminated at the end of the judicially imposed maximum.
6. A discussion of the provisions of these bills, which were similar are discussed in a following section of this report.

Sentencing as a Judicial Function

In twenty-four of the states having indeterminate sentencing as broadly defined, sentence setting is a judicial responsibility. In five of these twenty-four states, one of the two extremes is fixed mandatorily by statute while the other may be varied by the sentencing authority. These five states include: Michigan, South Dakota, Tennessee, Texas, and Wisconsin. In all except Michigan, the court may set the maximum term but not the minimum, which is set by statute. In Michigan, the maximum term imposed is the statutory maximum, while the judge has the discretion to set the minimum.

In eighteen of these twenty-four states, the judge sets the maximum and minimum at his discretion within the statutory limits. These states include: Arizona, Arkansas, COLORADO, Connecticut, Illinois, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Vermont, and Wyoming. In Georgia sentence is prescribed by the jury within the statutory minima and maxima.

In three of these states there are statutory provisions designed to prevent a judge from fixing a minimum term so closely identical to the maximum that the combined effect would approximate a definite sentence (e.g., 4½-5 years). The statutes in these states (Maine, New York, and Pennsylvania) provide that the minimum term may not exceed half of the maximum term imposed.

Generally, in these twenty-four states, parole eligibility depends upon completion of the minimum sentence. Six of these states, however, provide that an offender may be eligible for parole after completion of a specified portion if his minimum sentence or if he served a specific period of time.[7]

Several of these states, including Colorado, allow prisoners time off for good behavior (known as statutory good time and trusty good time). This "good time" is subtracted from the minimum sentence in determining eligibility for parole release.[8]

Sentence Set by Statute

In 12 states, the courts have the responsibility only for the determination of guilt. In seven of these states (California, Indiana, Kansas, Nevada, New Mexico, Ohio, and West Virginia) the sentence imposed is a restatement of the maximum and minimum set by statute. In the other five states (Florida, Idaho, Iowa, Utah, and Washington) there is no minimum sentence and the statutory maximum sentence is imposed.

7. Georgia, New Hampshire, New Mexico, North Carolina, Texas, and Wisconsin.
8. In Wisconsin statutory good time is deducted from the maximum sentence to insure that every inmate will be subject to at least some parole supervision after release.

Maximum and Minimum Set by Statute. Parole board authority and application of statutory good time varies among the seven states in which both the maximum and minimum are set by statute.

In four of the states (California, Indiana, Nevada, and New Mexico) an inmate may be paroled prior to the expiration of his minimum sentence. In two of these states (Indiana and Nevada), good time allowances are subtracted from the minimum time to be served. It has been indicated that many correctional authorities feel that good behavior and parole readiness do not necessarily coincide, yet these two states as well as Kansas and Ohio (which require the minimum, less good time, to be served) provide for good time deductions from the minimum time to be served. This conflict was apparently recognized in Indiana where another statutory section states that parole release is not a reward for good conduct or efficient performance of duties in the institution, but depends on the inmate's readiness to return to society and the reasonable probabilities of his success.

In addition to Kansas and Ohio, West Virginia also requires that the minimum sentence be served. It is the only one of the three, however, in which good time allowances do not apply to the minimum sentence.

No Minimum - Statutory Maximum. In the five states where there is no minimum, good time is deducted from the maximum sentence. There are, however, some differences in the date of parole eligibility and parole board authority among these states. In Utah, the Board of Paroles and Pardons has full authority to set the minimum sentence but both the judge and the prosecutor make sentence recommendations to the board. These recommendations are accompanied by information concerning the crime and surrounding circumstances and any other pertinent data. The board is not bound by these judicial recommendations but must review them prior to setting the minimum sentence.

Judges and prosecutors may also make recommendations as to sentence to the Washington Parole Board. While the board is not bound by these recommendations, there are certain statutory restrictions which must be adhered to in setting the minimum sentence. Any first offender who is sentenced for a crime involving the use of a deadly weapon must serve at least five years. Any offender with a previous felony conviction who is sentenced for a crime involving a deadly weapon must serve at least seven and one half years. Habitual offenders (three previous felony convictions) must serve at least 15 years, and embezzlers of public funds must serve at least five years.

In Iowa, the parole board may release a first offender after conviction but prior to incarceration. (A further examination of the Iowa statutes indicates that there are no provisions for probation, so that this method of parole is actually a probation substitute. This premise is confirmed further by the statute providing that the committing judge may recommend immediate parole release.) Offenders in Florida must serve at least six months before being considered for parole release. Florida has a statutory provision very similar to Indiana's, which specifies that parole is not a reward for good conduct and efficient performance and that: "No person shall be placed on parole until and unless the commission shall find that, there is

reasonable probability that if he is placed on parole, he will live and conduct himself as a respectable and law abiding person, and that his release is compatible with his own welfare and the welfare of society."

Various Methods of Sentencing: A Summary

As seen from the sentencing practices of other states, there are various approaches which are used. These may be summarized as follows:

1) Definite Sentence: No maximum or minimum; sentence could be set by statute or court; a limited amount of flexibility could be provided by deduction of good time credit.

2) Maximum and Minimum Limits Set by Statute, Court Sets Sentence Within Statutory Limits: This approach followed by several states, including Colorado. Most of these states allow good time deductions from minimum sentence. Parole release is usually not possible until expiration of minimum term (less good time).

3) Maximum and Minimum Limits Set by Statute, Court Sets Sentence Within Statutory Limits, Except that Court is Restricted on the Length of the Minimum Sentence: This approach is very similar to 2) above except that the court may impose a minimum not to exceed a certain proportion of the maximum (e.g., one-third or one-half).

4) Either Maximum or Minimum Sentence Set by Statute, With the Other End of the Sentence Set by the Court: If the minimum is set by statute, the court's authority extends only to the determination of the maximum period of incarceration. The parole board may fix a release date after completion of the minimum sentence or sooner, if so provided by law. Good time may be allowed and in some jurisdictions applies to the minimum sentence and in others to the maximum. If the maximum sentence is set by statute, the court's discretion extends only to the determination of the minimum sentence. The parole board then has discretion between completion of the judicially-imposed minimum and the statutory maximum, although eligibility for release after completion of a certain portion of the minimum term may be provided by law. Again good time may be allowed, with a difference among the states which have this provision as to whether good time is deducted from the minimum or maximum sentence.

5) Maximum and Minimum Sentence Set by Statute: The court's only function is the determination of guilt. The paroling authority determines release within the statutory sentence limits, although the statutes may provide that an offender is eligible for parole after completion of a specified portion of the statutory minimum. Good time may also be allowed under this approach, applying to the minimum sentence in some jurisdictions and to the maximum sentence in others.

6) Maximum Sentence Set by Statute, No Minimum: As in the preceding approach, the court's function is limited to a determination of guilt. The paroling authority fixes the minimum sentence by determining the release date. Good time allowances apply to the maximum sentence.

It should be noted that 2) through 6) above do not apply to capital crimes or certain others where life imprisonment is the penalty. There may be other crimes as well, such as armed robbery, or multiple convictions for which a specified term of confinement is provided by law before an offender is eligible for release. A number of states provide that an offender may be considered for parole release after a specified number of years of a life sentence has been served. In others, the life term offender may be considered for commutation of sentence after serving a specified number of years.

Good Time Applied to Maximum Sentence

While correctional authorities appear to be in general agreement that there is little relationship between institutional good behavior and societal readiness, a good case can be made for allowing good time credits to be applied to the maximum sentence. Good time deduction from the maximum sentence, however, should not result in an offender being released without supervision prior to the expiration of his maximum sentence. Rather it should be used as a method of providing parole supervision, even if only for a limited time, for every offender.

The offender who has not been released on parole prior to completion of his maximum sentence or who has failed on parole poses the greatest potential menace to society. Yet, if he is released after completion of his maximum sentence, he has paid his debt to society and is free to do as he chooses. It is possible that such an offender could accumulate good time credit for his institutional behavior, even though the parole board has not considered him ready for release. In Wisconsin, for example, he would be released under parole supervision after he completed his maximum sentence, less good time, and would remain under supervision until expiration of the maximum sentence.

Sentence Determination by Board -- Some Arguments For

1) Legal training does not necessarily equip judges to be able to make proper determination of the sentence to be imposed. Consequently, the sentence may bear no relationship to the period of incarceration needed before an offender is ready for a successful return to society. Some violators need little if any confinement, while others may never be released safely.

2) The courts for the most part do not have enough adequately trained probation officers to provide judges with sufficient presentence data to assist them in setting sentences commensurate with an offender's possibilities for rehabilitation.

3) Sentencing practices differ among judges -- not only among those whose courts are in different districts, but also among judges in the same district. This disparity is known to convicted offenders who compare sentences, and it lessens the success of institutional rehabilitation programs for this reason.

4) Judicial sentencing when combined with statutory good time deductions results in virtually automatic parole for all inmates upon completion of their minimum sentence minus good time allowances. Such parole release may or may not coincide with the inmate's potential for successful return to society. In those cases where inmates are not ready for parole, an injustice is done both to them and society. An injustice is also done to those inmates who perhaps are ready for release, but are held up because their minimum sentence was lengthy and has not yet been completed. The inclusion of statutory good time presumes that there is a direct correlation between institutional good behavior and readiness for release, which may not be the case, especially in regard to the institution-wise prisoner.

5) Length of sentence can be more adequately and fairly determined by a full-time qualified board removed from the heat and emotionalism of the court room and local attitudes toward crime. This is especially true when the board has the assistance of competent professional institutional personnel who can observe and evaluate the offender during his period of incarceration.

Sentence Determination by Board - Some Arguments Against

1) The judge is the person most acquainted with the case. He has presided during the trial, has observed the offender, and is acquainted with his record. Consequently, the judge can do a better job of setting sentence than a board whose determination will be based primarily on secondary written reports and brief personal observation.

2) There is no basis for assuming that a board would be any better at sentencing than the courts, either with respect to length of sentence or sentence variation for the same offense. In fact, a qualified board could do much worse than the courts, if the institutions are not adequately staffed to provide the data the board needs, and if the board members are not well qualified and cannot devote full time to their deliberations.

3) There is the possibility of recourse in the courts, if the offender believes that he has been given an unfair sentence. What recourse would be available from an unjust sentence determination on the part of the parole board?

4) There are institution-wise prisoners who can con professional personnel as easily as they can accumulate good time credits. Institutional conduct may not indicate that a man is ready for release, but it does show an effort to get along and obey rules and regulations; therefore it should be considered in determining release.

5) The paroling authority will be subjected to undue public pressure and criticismaif it exercises sentencing authority. Mistakes made by the board will cause public reaction which in turn could limit the board's effectiveness by forcing it to be more conservative in its actions regardless of the worthiness of the cases before them.

Method of Sentencing Proposed In The Model Penal Code

The following description of and comment on the sentencing method proposed in the Model Penal Code is abstracted from a recent Rocky Mountain Law Review article by Professor Austin W. Scott, University of Colorado Law School:[9]

> The American Law Institute has been at work for about ten years on a Model Penal Code, which, in addition to defining the various principal crimes from murder down to disorderly conduct, and stating the various general principles applicable to several or to all crimes, contains a number of sentencing and parole provisions.
>
> The Code divides all crimes into several categories: felonies of the first degree, second degree, and third degree; and misdemeanors and petty misdemeanors. For felonies other than some forms of murder, and for misdemeanors calling for an extended term of imprisonment, the Code provides for a type of indeterminate sentence in which the court, as well as the parole authority, plays a substantial part in determining the length of the imprisonment. The court (besides having power to suspend the imposition of sentence and place the convicted defendant on probation) generally fixes the minimum and maximum terms within limits provided by the Code for the particular type of offense; the limits are, of course, placed somewhat higher in the case of extended terms given to persistent offenders, professional criminals and dangerous mentally abnormal persons. The Code prevents the court from imposing (as a Colorado court may impose) what is in effect a fixed sentence (e.g., 9½-to-10 years imprisonment) by requiring, where the court fixes both the minimum and the maximum, that the minimum be no more than half the maximum. Within these minimum and maximum limits, as they may be reduced by good time deductions, the parole board determines the actual date of the prisoner's release under parole supervision.

9. Rocky Mountain Law Review, "Comment on Indeterminate Sentencing of Criminals," Professor Austin W. Scott, Jr., Vol. 33, Number 4, June, 1961, pp.547-549.

The Model Penal Code introduces a new concept into the handling of parole. In each case where the defendant is sentenced for an indefinite term of imprisonment, the sentence automatically includes as a separate portion of the sentence an indefinite 'parole term' -- of from one to five years, for most crimes. The parolee may be discharged from parole by the parole board any time after one year and before five years. If he violates the terms of his parole before his discharge, however, he may be recommitted.

The new Code provision thus does away with the anomalous situation, which exists in Colorado as in other states, whereby those who need parole the most get it the least, and those who need it the least get it the most - the situation which necessarily prevails when the term of parole terminates when the maximum sentence has been served.

Besides these provisions relating to length of imprisonment and length of parole, the Model Penal Code calls for a full-time salaried nonpolitical parole board consisting of persons possessing skill, evidenced by training or past experience, in correctional administration or criminology.

Parole Board Composition

If considerable sentencing discretion is given to the parole authority, it is extremely important that the board be composed of professionally trained and experienced personnel who serve in this capacity on a full-time basis. The American Corrections Association recommends the following qualification standards for parole board members:[10]

1) Personality: He must be of such integrity, intelligence, and good judgment as to command respect and public confidence. Because of the importance of his quasi-judicial function, he must possess the equivalent personal qualifications of a high judicial officer. He must be forthright, courageous, and independent. He should be appointed without reference to creed, color, or political affiliation.

2) Education: A board member should have an educational background broad enough to provide him with a knowledge of those professions most closely related to parole administration. Specifically, academic training which has qualified

10. A Manual of Correctional Standards, American Correctional Association, 1959, pp.537 and 538.

the board member for professional practice in a field such as criminology, education, psychiatry, psychology, social work, and sociology is desirable. It is essential that he have the capacity and desire to round out his knowledge, as effective performance is dependent upon an understanding of legal process, the dynamics of human behavior, and cultural conditions contributing to crime.

3) Experience: He must have an intimate knowledge of common situations and problems confronting offenders. This might be obtained from a variety of fields, such as probation, parole, the judiciary, law, social work, a correctional institution, a delinquency prevention agency.

4) Other: He should not be an officer of a political party or seek or hold elective office while a member of the board.

It might be expected that most small states would have part-time parole boards, even though the paroling authority has a considerable amount of discretionary sentencing power. Most of these states do not have a sufficient number of offenders appearing before the board to require a full-time parole authority. What is surprising, however, is that some of the larger states have part-time parole boards, when these boards have considerable authority in setting sentences. States in this category with part-time boards include: Iowa, Indiana, Kansas, and Tennessee, although the Tennessee board has one full-time member.

Full-time parole boards with broad sentencing authority are found in Michigan, Texas, Ohio, Washington, West Virginia, Wisconsin, California, and Florida.

Eight of the states under discussion (both large and small) have no statutory qualifications for parole board members: Idaho, Tennessee, Texas, Nevada, New Mexico, Utah, Washington, and Indiana. The statutory qualifications in three additional states (Kansas, South Dakota, and Iowa) do not specifically require knowledge and experience in corrections or related fields. Wisconsin is the only state in which the parole board is under civil service. In most of the other states, board members are appointed by the governor, usually with senate approval.

New Federal Approach to Sentencing

Federal judges have several alternatives in sentencing offenders as a consequence of the adoption of Public Law 85-752 (1958). This law applies only to offenders for which the court feels that a sentence of at least one year is required to serve "the ends of justice and the best interests of the public."

First, the court may designate the length of the sentence within the maximum prescribed by statute and also the minimum term which must be served before an offender shall become eligible for parole, which term may be less than but shall be no more than one-third of the maximum sentence imposed. This alternative incorporates the the features of indeterminate sentencing, because even though a definite sentence is imposed (e.g., 10 years), the offender will be eligible for parole no later than the completion of one-third of this sentence (three years and four months if sentence is 10 years) and possibly sooner if the court so indicates.

Second, the court may set the maximum sentence as prescribed by statute, in which event the court may specify that the offender may become eligible for parole at such time as the board of parole may determine. This alternative is very similar to the method of sentencing followed in some states in which the maximum sentence is set by statute and the minimum is determined by the parole authority.[11]

Third, if the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General for purposes of extensive study and evaluation. If this alternative is followed by the court, it is deemed that the sentence imposed is the maximum prescribed by law, although the results of this study and evaluation shall be furnished to the committing court within three months, unless the court grants additional time, not to exceed three months, for completion of the study. After the court receives the report and any recommendations which the Director of the Bureau of Prisons believes may be helpful in determining disposition, the court may do one of several things:

1) place the offender on probation;

2) affirm the maximum sentence already imposed, and leave it up to the parole board to determine the date of parole eligibility;

3) affirm the maximum sentence already imposed and set a date for parole eligibility which may be less than but not more than one-third of the maximum; or

4) reduce the sentence already imposed and set a date for parole eligibility which may be less than but not more than one-third of the maximum.

There are also two other sentencing alternatives afforded the court. The court has the following authority with respect to offenders convicted of any offense not punishable by death or life imprisonment:

1) Regardless of the maximum penalty provided by law, the court may suspend sentence and place the offender on probation for a period not to exceed five years.

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11. Washington, Utah, Florida, and Iowa.

2) If the maximum penalty provided by law is more than six months, the court may fix a sentence in excess of six months and provide that the offender be confined in a jail-type or treatment institution for a period not exceeding six months. After completion of this six-month period, the remainder of the sentence is suspended, and the offender is placed on probation for a period not to exceed five years.

In all instances where probation is granted the court has the authority to revoke or modify any condition of probation or may change the period of probation; however, the total period of probation shall not exceed five years.

Previous Proposals To Change The Method of Sentencing in Colorado

1957 Parole Department Proposal

In 1957, legislation suggested by the Adult Parole Department provided for statutory maximum sentences and no minimum, except that the court could, if it so desired, set the minimum sentence; however, the minimum could not exceed one-third of the statutory maximum or 10 years, whichever was less. The court was also empowered to reduce a minimum term at any time before expiration thereof upon the recommendation of the parole board, if the court was satisfied that such reduction would be in the best interests of the public and the welfare of the prisoner. This proposed measure made no change in parole board composition nor did it provide for institutional transfer.

S.B. 188 (1959) and H.B. 42 (1961)

This proposal introduced in two different sessions was far reaching in scope and would have mde a drastic change in sentencing. Under the provisions of this measure a three-member corrections and parole authority would be established under civil service. The court would determine guilt and commit to the authority. The court, if it so desired, could set a sentence, but such sentence would be purely advisory only.

The parole and corrections authority would determine the institution in which the offender would be incarcerated (penitentiary, reformatory, state hospital) and would also have the authority and responsibility for transferring offenders among the three facilities. The authority would also have the responsibility for providing psychiatric services and diagnostic facilities at the three institutions.

Authority members would be required to have a broad background in and ability for appraisal of law offenders and the circumstances of the offenses for which convicted. Members selected, insofar as possible, should have a varied and sympathetic interest in corrections work, including persons widely experienced in the fields of corrections, sociology, law, law enforcement, and education.

Previously-sentenced offenders would have the choice of coming under the jurisdiction of the proposed act or continuing to serve their sentences under the statutes in effect upon the date of sentence, with allowances for good behavior.

Discussion of S.B. 188 (1959) and H.B. 42 (1961). This proposal would have established one day to life sentences in all cases. The parole and corrections authority would have both parole and administrative responsibility. The requirement that the authority provide for both psychiatric services and diagnostic facilities conflicts with institutional functions and programs and the general authority of the Department of Institutions. This overlapping could lead to unnecessary expense, duplication, and confusion of functions between the proposed authority and the Department of Institutions, with its divisions of corrections and psychiatric services.

While the authority would be required to classify each offender and assign him to an institution, it would be required only to interview him and study his case some time during the initial six months of his confinement. The question arises as to what would be the status and placement of the offender during the period (which might be as long as six months) before the authority interviews him and reviews his case. Further, there is no provision for the assistance of professional personnel on the institutional staffs in making these determinations.

It would be possible under the terms of the act for one authority member to interview an offender and make recommendations concerning his status for consideration by the authority sitting en banc. It would be far better if each authority member could have equal opportunity to interview offenders and review cases prior to determining status or disposition. In addition to the possible overlapping of functions with the Department of Institutions, the authority would be given the administrative responsibility for the Adult Parole Division. This change would increase the administrative confusion. No provision is made, however, for giving the authority administrative control over the correctional institutions. So if one purpose of the measure is to create an independent correctional agency embracing all facets of the correctional program, it falls short in this respect. Rather the result would be a considerable amount of administrative confusion. The authority would not have control of the correctional institutions but would have the responsibility of establishing and administering certain programs within the institutions as well as administration of the Division of Adult Parole.

Proposals Under Consideration

While the Committee has not made any specific recommendations as yet concerning sentencing, it has had several suggestions placed before it for consideration. Two of these suggestions cover relatively minor changes in sentencing procedures. Judge Hilbert Schauer, 13th Judicial District, has recommended that sentencing judges be given the authority to re-fix sentences within a certain time after the original sentence is imposed, perhaps upon recommendation of the parole board. It is his opinion that no further change in the sentencing statutes and procedures would be necessary.

Warden Harry Tinsley has recommended that, among other improvements, the committee should consider giving statutory status to the Governor's Executive Clemency Advisory Board. This board makes recommendations to the governor concerning commutation of sentences and pardons, and it is composed of Warden Tinsley, Adult Parole Director Grout, the attorney general, and another member of the parole board. At present this board has no legal status, having been established by executive order rather than statute.

The other two proposals brought before the committee would involve substantial revision in sentencing procedures. Judge George McLachlan, 15th Judicial District, has suggested that the committee consider following federal sentencing procedures and adapting them to meet Colorado's needs. Warden Wayne T. Patterson, reformatory, and Edward Grout have asked the committee to re-examine the 1957 proposal and to use it as a guide in developing a new sentencing program.

MEMORANDUM

November 17, 1961

TO: Colorado Legislative Council

FROM: Legislative Council Criminal Code Committee

SUBJECT: The Bustamante Decision and Related Statutes

At the November 17 Criminal Code Committee meeting, it was decided that the committee would ask the Council to request the Governor to include several criminal statutes needing remedial revision in his message to the 1962 session of the General Assembly. These revisions were believed necessary because of the Bustamante decision by the Colorado Supreme Court in 1956.

A summary of the Bustamante decision and the statutes affected follows:

Bustamante Case, 133 Colorado Reports 497

Portion of Decision Which Is Of Concern. "The sentence imposed of imprisonment in the state penitentiary is admittedly error. The offense charged is statutory, C.R.S. 1953, 40-19-3, and provides 'shall upon conviction be punished by imprisonment not less than five years.' Imprisonment in the penitentiary is unlawful unless expressly provided by statute. Under a similar statute this Court has so held. Brooks v. The People, 14 Colo. 413, 24 Pac. 553. Where a penitentiary sentence is imposed when the statute prescribed imprisonment, this Court may reverse the sentence only. Miller v. The People, 104 Colo. 622, 94 P (2d) 125."

Statutes Which Should Be Re-examined in Light of the Bustamante Decision

All of the statutes listed below provide penalties for violations which appear to be felonies rather than misdemeanors, and yet they do not provide for imprisonment in the penitentiary.

One statute which is of special concern is 14-22-8(c) 1960 perm. supp. to C.R.S. 1953. This statute refers to violations of the banking code, and sub-section (c) reads as follows: "Shall be guilty of a felony if the act or omission was intended to defraud, punishable by imprisonment not exceeding five years, or a fine not exceeding twenty-five thousand dollars, or both such fine and imprisonment." This statute defines certain violations as felonies, but does not provide for a penitentiary sentence. The question here is whether the fact that the violation is defined as a felony means that imprisonment will be in the penitentiary, even though the place of confinement is not specified.

According to the Bustamante decision, a person cannot be confined in the penitentiary if the statute does not so provide. In the Smalley case (134 Colorado 360), the court held that unless a person is confined in the penitentiary, he is not guilty of a felony. Further, the court also stated in the Smalley case that if there is any doubt about the meaning of a word in a penal act, that construction which favors the liberty of the accused will be adopted. This position is a reiteration of the position the court had taken in a number of previous cases.

The same questions apply to several other statutes:

1) 7-16-11, which prescribes the penalty for the falsifying of warehouse certificates by inspectors; such violation is defined as a felony, but the penalty is imprisonment for not less than two and one-half years or more

2) 7-16-18, which prescribes the penalty for intent to defraud by breaking the seal of any structure in which grain is stored; such violation is defined as a felony, but the penalty is imprisonment for not less than one year or more than two years.

3) 13-15-9, which prescribes penalties for violations of the anti-monopoly financing law; violation of this act is defined as a felony, but the penalty is imprisonment for no less than six months or more than one year or a fine of not more than $5,000 or both fine and imprisonment.

4) 49-11-14, which prescribes the penalty for aiding or abetting fraud in connection with the casting of absentee votes; such violation is defined as a felony, but the penalty is imprisonment for not less than one or more than five years. (Another portion of this section referring to public officials does specify confinement in the penitentiary.)

5) 80-19-14, which prescribes penalties for violations of the theatrical employment agencies law; violation of this act is defined as a felony, but the penalty is imprisonment not to exceed four years or a fine of not more than $1,000 or both.

6) 92-36-5, which prescribes penalties for violation of the provisions of article 36 (mining equipment and ownership); violation of this article is defined as a felony, but the penalty is imprisonment not less than one year or more than five or a fine of not less than $300 or more than $1,000 or both.

7) 138-1-37 (3)(b), which prescribes penalties for income tax evasion; such violation is defined as a felony, but the penalty is a fine of no more than $10,000 or imprisonment for five years or both.

Statutes of Most Concern. Cited below are statutes which appear to be of the most concern with respect to the Bustamante decision:

Citation	Violation	Penalty
Chapter 232, Section 20, Session Laws of 1961	Violation of the Security Code	not more than 3 years
40-2-45 (1)	Kidnapping, bodily harm to victim	death or life imprisonment
40-3-7	Burglary using explosives	25-40 years
8-2-30	Stealing certain animals	not more than 6 years
65-1-14	Avoiding effect of writ of habeas corpus	1-5 years
40-19-3	Public funds used for private purposes	not less than 5 years
40-2-28 (3)	Third degree rape	1-5 years
146-4-1	Fraudulent receipt issued by warehouse officials	not more than 5 years
146-4-3	Issuing fraudulent negotiable warehouse receipts	not more than 5 years
40-23-7 through 40-23-17	Anarchy and sedition	not more than 20 years
40-7-19	Insurrection	not more than 10 years
40-2-22	Sabotage	not more than 10 years
40-22-4	Espionage -- wrongful discovery of secrets	not more than 5 years
40-7-20	Obstructing state messages	not more than 2 years